Sprint Communications Company L.P. ("TCI *et al.*"); and U S WEST Communications, Inc. ("USWC").

**B. Consensus and "Substantial Deference"**

1. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we accord "substantial deference" to the proposals submitted by the Working Group with respect to issues on which the Working Group has reached consensus on or before January 1, 1996. The statute does not define "substantial deference." In this case, while members of the Working Group disagreed upon many of issues relating to interconnection and unbundling, nevertheless consensus was reached upon a number of the proposed rules. Thus, we must develop and apply our understanding of the term "substantial deference." To do so, we have examined the concept within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

2. In implementing our understanding of "substantial deference," we take the following into consideration:[4] our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rules with all provisions of § 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of

[4] This listing is not a definitive statement of the considerations relied upon by the Commission.

regulated entities to understand the proposed consensus rule and the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective.

3. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, where we rejected a consensus rule the rationale supporting our decision is clearly articulated.

**C. The Telecommunications Act of 1996**

1. After we issued the notices of proposed rulemaking, but before conclusion of the hearings in this docket, Congress enacted the Telecommunications Act of 1996 ("Act"). Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 151, *et seq.*). President Clinton signed the Act on February 8, 1996. Notably, the Act mandates competition in the local exchange market. *See* § 253 (no state or local statute or regulation may prohibit the ability of any entity to provide any interstate or intrastate telecommunications service). The Act also sets forth

numerous provisions relating to interconnection and unbundling. For example, § 251(a) sets forth the duty of telecommunications carriers to interconnect with the facilities and equipment of other providers. Subsection 251(c)(3) compels incumbent local exchange carriers ("LEC"):

> . . .to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . .

2. The parties to this case have argued that, in many instances, the Act constrains our authority to adopt some of the proposed rules. We address those arguments in the discussion relating to specific proposals. At this point, we simply comment upon the overall effect of the Act upon our decision. We note that virtually every party to this proceeding filed extensive comment regarding the Act and how its provisions influence the determinations to be made in this proceeding. The two rounds of post-hearing comment provided for in this docket largely addressed the Act's interconnection and unbundling requirements. Therefore, the parties have had sufficient opportunity to comment upon the relationship of the Act to the interconnection and unbundling rules under consideration here, and it is appropriate for us to consider the Act in ruling upon the various proposals herein.

3. In general, we observe that, in adopting the rules set forth in Attachment A, we have attempted to adopt rules which are consistent with the requirements of HB 1335 and the notices of proposed rulemaking issued herein, while avoiding inconsistency with the Act. In that spirit, we have carefully considered argu-

ments that various rules proposed by some of the commenters in specific reliance upon the Act exceed the scope of the notices of proposed rulemaking. We disagree with those arguments with respect to the rules set forth in Attachment A. The Act is generally consistent with the intent of HB 1335 and the notices which initiated this docket. Therefore, even though the Act was passed after the issuance of the notices of proposed rulemaking, we are able to approve rules which are both within the scope of the notices and consistent with the Act.

4. The suggestion was made (*e.g.*, by USWC) that the rules adopted here should be as narrow as possible inasmuch as the Federal Communications Commission ("FCC") will be promulgating rules to implement the Act. *See* § 251(d) (within 6 months of enactment of the Act, FCC must establish regulations implementing interconnection and unbundling requirements). We disagree with that suggestion for various reasons.

5. First, we believe that the rules approved here are consistent with the Act for the reasons discussed *infra*. Second, HB 1335 requires us to implement interconnection and unbundling standards by July 1, 1996. *See* § 40-15-503, C.R.S. Therefore, we cannot defer action on interconnection and unbundling rules in anticipation of forthcoming FCC regulations. Finally, we note that the States retain extensive authority to implement the Act's requirements. *See* § 251(d)(3) (in prescribing and enforcing rules, the FCC shall not preclude the enforcement of State regula-tions which are consistent with § 251 and which do not substan-tially prevent implementation of the Act); § 253(b) (nothing in § 253

shall affect the ability of a State to impose, on a competi-tively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers); § 261(b) (nothing in Act shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of the Act, or from prescribing regulations after such date of enactment, if such regulations are not inconsistent with the Act). We conclude that the provisions set forth in Attachment A are consistent with the Act, and that no need exists to await FCC action before adoption of the rules.

## II. **APPLICABILITY OF RULES**

Rule 1 states that the rules are applicable to all providers who offer telecommunications exchange service within the state. In conjunction with Rules 2.24 and 2.25 (definitions of "telecommunications exchange service" and "telecommunications provider"), this rule clarifies that the regulations are, intended to apply to all providers of local exchange service.

## III. **DEFINITIONS**

1. As discussed *infra*, substantial disagreement exists between the parties regarding substantive requirements which use terms defined in Rule 2. However, with respect to the definitions themselves, most of the provisions contained in Rule 2 were consensus rules, or, at least, little dispute existed with respect to

these terms. We discuss here the rationale for some of the definitions which were not included in the notices of proposed rulemaking or for which some controversy existed among commenting parties.

2. Some of the new definitions (*i.e.*, terms which were not included in the notices of proposed rulemaking) in Attachment A are based upon the Act. These include the terms "incumbent telecommunications provider", "network element", and "rural telecommunications provider."

3. Rule 2.10 defines "incumbent telecommunications provider" in a manner consistent with subsection 251(h)(1) of the Act. In addition, the provisions in Rule 2.10 which describe the circumstances in which a new entrant may be considered to be an incumbent provider are generally consistent with subsection 251(h)(2).[5] The provision in Rule 2.10 that a new entrant will be considered to be an incumbent after three years from the date of certification, absent specific action by the Commission, is based upon our judgment that this is an appropriate requirement for new entrants. Rule 2.10, in conjunction with other rules, will result in asymmetric treatment of incumbents as compared to new entrants. Notably, even before passage of the Act we received comment as to whether incumbents should be treated differently than new entrants. We address this issue infra.

4. With respect to the definition for "network element", Rule 2.13 is identical to the definition set forth in § 3(a)(45) of

[5] This rule was suggested by Staff and the OCC. We note that the three factors which would result in a new entrant being treated like an incumbent are, in Rule 2.10, stated in the disjunctive

the Act (to be codified at 47 U.S.C. 153(a)(45)). We find this to be appropriate.

5. "Rural telecommunications provider", Rule 2.17, is based upon the provisions of the Act, § 3(a)(47) (to be codified at 47 U.S.C. 153(a)(47)), as well as the provisions set forth at subsection 40-15-503(2)(d), C.R.S. In conjunction with Rule 9, rural telecommunications providers will be exempt from many of the interconnection and unbundling requirements established here, absent further action by the Commission.

6. We note that Rule 2 does not incorporate definitions for "loop concentration", "loop distribution", and "loop feeder." Some of the parties (*e.g.*, AT&T and MCI) proposed to define these terms in the rules as part of their position that the loop should be unbundled into a number of components. In Rule 6.2, we list those elements which must be unbundled. Rule 6.2 does not adopt the position of new entrants[6] regarding loop unbundling. Therefore, these definitions are unnecessary. *See* discussion regarding Rule 6.

7. As noted above, § 40-15-503(2)(b) mandates that the Commission adopt interconnection and unbundling rules relating to "essential facilities." The parties disagreed with respect to the definition of this term. USWC argued that an "essential facility" is a feature, function or capability that competitors cannot practically duplicate or obtain from an alternative source, and to

[6] In many instances, the positions of parties seeking to enter the local exchange market in competition with incumbent LECs (*e.g.* AT&T, Comptel, ICG, MCI, MFS, and TCI *et al.*) were virtually identical with respect to many of the rules. This decision, in discussing some of the positions of these parties, refers to these parties as "new entrants."

which reasonable access is necessary to enable competition.[7] In contrast, parties such as AT&T and MCI suggested that no definition of "essential facilities" is necessary. According to that comment, the Act does not limit competitor access to unbundled network elements to "essential facilities" only. AT&T and MCI recommended that, if the Commission adopts a definition of the term, it should be sufficiently broad to include all network elements which the FCC may require to be unbundled.

8. Our adopted rule defines "essential facilities or functions" as those network elements which are required to be unbundled. As indicated in the arguments for or against a particular definition of the term, the significance of the definition is related to the unbundling requirements themselves. As such, our definition, in conjunction with Rule 6, which lists the network elements which must be unbundled, directly resolves the dispute. In addition, the definition of "essential facilities" is potentially related to imputation requirements for incumbent local exchange providers. We address those requirements in Rule 7.6 *See* discussion *infra*.

## IV. <u>INTERCONNECTION--RULE 3</u>

1. As defined in the rules, interconnection is the process of providing a connecting link between the networks of competing telecommunications providers for the purpose of completing local calls originating on the network of one provider and terminating on

[7] Consistent with this concept of essentiality, USWC's unbundling rule would limit the network elements required to be unbundled.

the network of another provider. Simply put, interconnection enables the customers of one provider to call customers of another provider. Rule 3 in Attachment A sets forth our approved requirements relating to interconnection.

2. There was substantial disagreement between the parties regarding certain issues associated with interconnection, including: (1) should the same interconnection requirements apply to incumbents and new entrants alike, or should more stringent requirements be applied to incumbents; (2) at what points should interconnection be compelled; (3) what collocation arrangements should be mandated; (4) what rates, terms, and conditions should apply for interconnection? We discuss these issues here.

**A. Applicability of Rule 3**

1. Adopted Rule 3.1 provides that, "*All* telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers" (emphasis added). In addition, Rule 3.4 directs that a telecommunications provider generally (*i.e.*, the rule does not distinguish between incumbents and new entrants) shall allow for physical or virtual collocation of equipment necessary for interconnection at that provider's premises. Some of the parties objected to rules which apply identical interconnection requirements to new entrants and incumbent LECs.

2. Parties such as AT&T, MCI, and MFS argued that the Act imposes different interconnection standards upon incumbent LECs as compared to new entrants. Specifically, these parties suggested,

while the Act requires all providers to interconnect with the facilities of other telecommunications providers (§ 251(a)(1)), only incumbent LECs are compelled to provide interconnection at any technically feasible point (§ 251(c)(2)). These parties also pointed out that the Act, § 251(c)(2)(6), imposes collocation obligations upon incumbents only. According to these parties, Congress acknowledged the monopoly position of the incumbents and the significant market and cost hurdles that new entrants would encounter in competing with incumbent LECs. Thus, it was suggested, imposition of identical interconnection responsibilities upon incumbents and new entrants is directly inconsistent with the Act.

3. Staff, the OCC, USWC, and CITA disputed these arguments. These parties suggested that adoption of identical interconnection obligations for all providers will foster competition. These parties also submitted that uniform requirements are consistent with the Commission's duty to adopt non-discriminatory interconnection rules. We agree with these positions.

4. First, interconnection by all providers is necessary to enable end-users of one telecommunications provider to complete calls to customers of other providers. The obligation to interconnect on the part of all providers will advance the goal of promoting competition in the local exchange market. The record does not indicate that imposition of identical interconnection requirements will harm the ability of new entrants to compete with incumbents. Since, under the Act, even new entrants must interconnect with other providers, there should be good reason to adopt

lesser interconnection standards for new providers. No compelling reason was offered in this proceeding.

5. As for the preemptive effect[8] of the Act on our rules, we disagree with the arguments by the new entrants. Federal law may be found to preempt inconsistent State action, generally, in three ways: (1) Congress may express its intent to preempt State law; (2) preemption may be inferred from a pervasive scheme of federal regulation such that preclusion of State laws on the subject will be assumed; and (3) a State law may be preempted because it conflicts with a federal law. *Grand Junction v. Ute Water Conservancy District,* 900 P.2d 81 (Colo. 1995), *Banner Advertising, Inc. v. People*, 868 P.2d 1077 (Colo. 1994). *See also Cippollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1990). None of these circumstances exist here.

6. We note that, while the Act enumerates distinct requirements for new entrants and incumbents, the Act does not specifically command that incumbents and new entrants be treated differently under State regulation. Moreover, the Act's preservation of significant State prerogative in implementation of its purposes (paragraph E.3) indicates that Congress has not intended to preempt State regulation simply because that regulation is different. We conclude that our interconnection rule, which treats all providers the same, does not conflict with the purposes of the Act, and, therefore, is not preempted.

[8] In our view, the numerous arguments in this proceeding that the Act prevents us from adopting various rules are preemption arguments.

**B. Points of Interconnection**

1. Rule 3.3 declares that telecommunications providers shall allow interconnection, ". . .at any technically feasible point within the provider's network. . . ." The rule is consistent with the directives within § 251(c)(2) of the Act. Some of the parties (*e.g.*, AT&T, MCI, USWC) suggested that the rule should specify the permissible points for interconnection as being: a point inside the originating provider's central office; a point outside the originating provider's central office that such provider controls; a point outside the terminating LEC's central office; or, at any point agreed to between the interconnecting providers. As grounds for their recommendation, these parties observed that the FCC will conduct a rulemaking proceeding to determine the points at which it is "technically feasible" to provide interconnection. Pending that determination, these parties proposed that the rules specify the points listed above.

2. Our decision to direct simply that interconnection occur at any "technically feasible point" is based upon the suggestion of Staff and the OCC. As noted in their comments, the adopted rule is consistent with present federal law (*i.e.*, the Act). Specifying or restricting the possible points of interconnection as suggested in some of the comments may prove to be too restrictive in the future. Therefore, we accept the recommendation by Staff and the OCC to adopt a standard which is consistent with the Act at this time.

3. USWC and CITA also recommended that the interconnection rules be limited to trunkside interconnection[9] only. That is, USWC and CITA strongly opposed the suggestion that the rule allow for lineside, as well as trunkside, interconnection[10]. According to USWC and CITA: Trunkside interconnection relates to the interconnection of provider-switched networks, and permits the mutual exchange of calls. Lineside interconnection, on the other hand, relates to the connection of dedicated end-user loops to the lineside of a switch, and is essentially an unbundling issue. Lineside interconnection has nothing to do with the interconnection of switched networks, or the exchange of local calls between networks. Therefore, since trunkside and lineside interconnection are fundamentally different, trunkside interconnection only should be addressed in the interconnection rule; lineside interconnection should be addressed in the unbundling regulation.

4. We understand USWC's and CITA's objection (to inclusion of lineside interconnection in the rule) to be premised upon two arguments: (1) the services involved in lineside interconnection (*e.g.*, unbundled switching ports, loopless exchange service) are not essential elements which should be unbundled; and (2) there is no market demand for the services which could be provided with lineside interconnection.

5. All other parties opposed the position of USWC and CITA. These parties commented that the USWC/CITA position is

[9] Trunkside interconnection refers to the connection between switches through trunks.

[10] Lineside interconnection generally refers to the connection between a switch and a loop.

overly restrictive. According to this comment, competing LECs will require both trunkside and lineside interconnection. For example, in the event a competitor decides to build its own loop, it may need interconnection on the lineside only. This would enable a provider to connect end-users to their network. A potential effect of the USWC/CITA position, according to the parties, is that competitors may be required to replicate existing network infrastructure. These results, it was asserted, will impair competition in the local exchange market.

6. Since we agree with those parties opposing the USWC/CITA position, the interconnection rule is not limited to trunkside interconnection. We conclude that rejection of the USWC/CITA arguments is consistent with the intent of HB 1335 as well as the Act.

### C. Collocation

1. The notices which initiated this proceeding essentially proposed that only virtual collocation be required. Physical collocation was to be permitted by mutual agreement only. However, the Act mandates that incumbent LECs provide, ". . . .physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ." *See* § 251(c)(6). Although the Act compels incumbent LECs to offer physical collocation, USWC, nevertheless, asserted that it should not be forced to provide the service. USWC argued that the

legality of physical collocation is in question[11], and suggested that the rules continue to mandate virtual collocation, while permitting providers to negotiate for physical collocation. We reject this suggestion.

2. Undoubtedly, Congress was aware of the holdings of the federal courts with respect to the authority of the FCC to order physical collocation at the time of passage of the Act. Comment in this proceeding (*e.g.*, by AT&T) asserted that prior case law regarding physical collocation simply held that the FCC lacked authority to order the service under then existing statutes. Of course, it is not our prerogative to decide upon the constitutionality of § 251(c)(6). Based upon the Act, most of the parties recommended that we compel the offering of physical collocation, in addition to virtual collocation. We agree with this comment.

3. Rule 3.4 requires providers to offer physical collocation, except where the Commission determines that the service is not practical for technical reasons or due to space limitations. We find that this requirement will promote competition in the local exchange market, consistent with the intent of HB 1335 while affording a mechanism for an alternative in circumstances where the specific facts compel a different result.

4. USWC also suggested that collocation requirements be limited to equipment needed to terminate calls (*e.g.*, circuit terminating equipment). Notably, USWC interprets the Act's

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[11] *Bell Atlantic Telephone Co., et. al. v. FCC et. al.*, 24 F.3d 1441 (D.C. Cir. 1994) was cited for this argument.

reference to "equipment necessary for interconnection or access to unbundled network elements" as restrictive provisions. We clarify that the rule is not intended to limit collocation in the manner suggested by USWC.[12] We agree with the comments by the new entrants that USWC's proposed limitation upon the type of equipment which may be collocated may substantially impair the ability of new providers to compete. This result would contrary to HB 1335 and the Act.

## V. INTERCONNECTION RATES, TERMS, AND CONDITIONS

The rates, terms, and conditions to be established for interconnection were among the most controversial issues discussed in this docket; little consensus was reached. In part, the parties disagreed regarding issues such as: (1) what pricing methodologies should be used in setting rates; (2) what rates should be established for new entrants; and (3) may rates be set by agreement between providers, or should the tariff process apply? Our disposition of these issues is set forth in Rules 3.3 and 7.1.

### A. Pricing For Intérconnection

With respect to the issue relating to the rates for interconnection, the primary dispute between the parties concerned the methodology to be employed in setting such rates. Specifically, the new entrants argued that prices be set at Total Service Long Run Incremental Costs ("TSLRIC"). USWC and CITA strongly opposed the use of TSLRIC in this manner, maintaining that rates

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[12] Neither do we interpret the Act in the same manner as USWC.

must be designed to recover some portion of shared and common costs. Staff and the OCC suggested that these rules not specify the ratemaking methodology for interconnection. Instead, Staff and the OCC asserted, the principles set forth in the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, ("Costing and Pricing Rules") should control the pricing of these services.

**B. Position of New Entrants**

1. The new entrants generally recommended that pricing for interconnection should be set at TSLRIC.[13] According to their arguments: The Commission should set rates at levels which would occur in fully competitive markets. In such a market, prices would naturally move toward incremental cost. The Commission should attempt to replicate the results of a competitive market by setting rates at their economically efficient levels (*i.e.*, their incremental cost). Notably, such prices would be compensatory to incumbent LECs.

2. The new entrants further argued that economic-based pricing is essential if competition in the local exchange market is to succeed. In order to promote an environment which will present consumers with the greatest diversity of pricing plans, calling options, and service features, the new entrants suggested, it is

[13] TSLRIC, as defined by some of the parties, is equal to the firm's total cost of producing all of its services, assuming the service in question is offered, minus the firm's total cost of producing all of its services excluding the service in question. This definition was taken from the Commission's Costing and Pricing Rules.

important that the underlying exchange network be available to all retail providers on the same terms, conditions and prices. Since economic (*i.e.*, incremental) cost is the effective price faced by the LEC itself, other providers should also be charged for network components based upon such costs. In short, the new entrants argued that rates for interconnection must be set at TSLRIC in order to promote competition.

3. Finally, the new entrants maintained that the Act mandates rates based upon TSLRIC. According to this argument, § 252(d)(1) directs that the charge for interconnection and network elements shall be based on cost, and "may include a reasonable profit." TSLRIC pricing already includes a reasonable profit. That is, these parties claimed that a properly performed TSLRIC study is based upon costs and includes a reasonable profit. The new entrants concluded that profits in excess of those included in TSLRIC (*e.g.*, the recovery of contribution for shared or common costs) would result in excessive rates such that competition in the local exchange market would be impractical, and, therefore, would constitute a barrier to entry. As such, these parties claimed that prices in excess of TSLRIC contravene the Act.

### C. USWC/CITA Position

1. USWC and CITA emphatically disputed the positions of the new entrants.[14] According to these parties, "cost-based"

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[14] USWC's proposed pricing rules stated that the prices for interconnection and unbundled elements shall be set to cover TSLRIC, plus a reasonable portion of shared and overhead costs.

pricing[15] does not mean that prices should equal costs. In response to the argument that prices in a competitive market would move to TSLRIC, USWC stated that this assertion is based upon "the textbook model of *perfect competition*, where the prices of *a single-product firm* will in the long-run equal 'marginal costs'. . . ." USWC January 17, 1996 comments, page 28. However, USWC pointed out, multi-product firms such as USWC itself have significant shared and common costs. These costs, which are economic costs of the firm, must be recovered from all services in the aggregate, if it is to remain in business. Thus, while competition may drive prices towards TSLRIC, a multi-product firm can never price its services *at* TSLRIC, or it would not recover total cost.

2. USWC claimed that prices for all services, including interconnection, must include a markup above incremental costs in order to provide a contribution to shared and overhead costs, and in the case of a rate-of-return regulated firm, to embedded costs as well. If prices for some services do not include a contribution to shared, overhead and embedded costs, these costs would be borne by customers of other services. Interconnection rates set at TSLRIC, according to this contention, will mean that USWC's prices for retail end-user offerings would have to be increased to enable recovery of shared, overhead and embedded costs. Thus, pricing interconnection at TSLRIC would result in a subsidy from USWC's retail customers to new entrants. USWC concluded that this would

[15] Subsection 40-15-503(2)(b)(I), C.R.S. directs that the Commission adopt rules for "cost-based, non-discriminatory carrier interconnection to essential facilities or functions, which shall be unbundled."

result in a significant competitive advantage for new entrants, since it would be required to raise retail rates to make-up for the lost contribution.

3. As for the contention that the Act mandates TSLRIC pricing, USWC responded: Section 252(d) requires rates to be based on costs and "may include a reasonable profit." Although TSLRIC studies include a return component, that component is based on the forward-looking anticipated cost of capital. In addition, those studies include the "return" on investment directly attributable to a particular service only. A TSLRIC study for network elements would not include any of the joint or shared costs of the network, and thus would not include any return on these elements. For these reasons, USWC claimed, the Act does not require TSLRIC pricing. Furthermore, pricing to recover shared and common costs is consistent with the provisions of the Act.

### D. Staff/OCC Position

Staff and the OCC essentially recommended that the pricing methodology for interconnection *not* be specified in the rules. These parties pointed out that the Commission's Costing and Pricing Rules provide sufficient guidance regarding the pricing of regulated services. Given the existence of those rules, Staff/OCC suggested that it would be inappropriate for the Commission to bind itself to any one particular methodology in this docket. We agree with this recommendation.

**E. Adopted Rule**

1. Staff/OCC are correct in observing that the Costing and Pricing Rules address the issue regarding the pricing for interconnection. For example, Rules 4 and 5, 4 CCR 723-30, mandate that TSLRIC as well as fully distributed cost studies be presented at the time of any service rate proposal for either a fully regulated telecommunications service or an emerging competitive service which has been granted relaxed regulatory treatment by the Commission. Rules 4 and 5 also provide that TSLRIC studies will be used to establish price floors. Fully distributed cost studies will be used as one component of the pricing decision.

2. We further note that Rules 4 and 5 contain other guidance regarding the principles and methods by which the rates for interconnection should be set. Given the guidance set forth in the Costing and Pricing Rules we find it unnecessary to accept any of the pricing theories advocated by the parties in this docket. Rule 3.3 in Attachment A reflects our decision. The rule, in part, provides that interconnection rates shall be just, reasonable, and non-discriminatory, and consistent with the Costing and Pricing Rules.

**F. Interconnection Rates For New Entrants**

1. The new entrants also suggested that new providers should be permitted to adopt the interconnection rates of the

incumbent LEC. The reasons offered for this proposal were: First, this proposal would streamline the tariff process and establish rates for interconnection more quickly, thus promoting competition in the local exchange market. Second, such a rule would produce uniform rates for all LECs.

2. USWC, Staff, and the OCC resisted the suggestion by the new entrants. In part, these parties pointed out that adoption of the new entrants' proposal amounts to a universal grant of relaxed regulation. That is, under the new entrants' rule, individual providers would be exempted from requirements that they justify their rates to the Commission by submission of appropriate studies. We agree with the statements of USWC, Staff, and the OCC that there is insufficient information in the present docket to grant relaxed regulation to all new entrants. Therefore, Rules 3.3 and 7.1.2 require new entrants to establish interconnection rates through the tariff process.

## G. Interconnection Tariffs

1. Adopted Rule 7.1 requires providers to file tariffs to establish the rates, terms, and conditions for interconnection.[16] Based upon certain provisions in the Act, USWC argued that any rule which mandates the filing of tariffs for interconnection or

[16] Rule 7 also requires that the rates, terms, and conditions for termination of local traffic, unbundled network elements, and white pages be established through the tariff process.

unbundled network elements has been preempted. Specifically, USWC noted, § 252(a)(1) states:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers . . . The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement . . .

Section 252 also establishes a process in which State Commissions may mediate or arbitrate providers' negotiations concerning interconnection or unbundled network elements.

2. USWC argued that tariff requirements directly conflict with the negotiation process established in the Act. Such requirements, USWC claimed, would circumvent and undermine the Act's negotiation process and render "meaningless the provisions of the Act which assign mediator and arbitrator roles to the Commission." USWC February 21, 1996 Comments, page 35. In light of these provisions of the Act, USWC concluded that we are prohibited from adopting a tariff process for interconnection or unbundled services.

3. Other parties, especially Staff and the OCC, disagreed with USWC's assertions. Notably, Staff and the OCC explained that a tariff requirement may be consistent with the negotiation process specified in the Act. According to those comments, certain matters may best be treated in privately-negotiated agreements. These may include requests for construction of special facilities for inter-

connection; requests for unique, non-standard network interconnections; arrangements involving carrier-specific interfaces or protocols; and arrangements involving unique, non-standard operational support systems. On the other hand, Staff and the OCC also suggested that some matters are appropriate for tariffing. Generally, these include rates and charges for interconnection and unbundled network elements, and standard terms and conditions for such services. We agree with those parties who advised us that the Act does not preclude a tariff process.

4. As discussed in the comments of Staff and the OCC, a tariff and a negotiation process may coexist where generally available terms and conditions are set forth in tariffs, and other items are left for private negotiations. We note that one of the purposes of a tariff is to ensure that listed terms and conditions (*e.g.*, rates) are publicly known and generally available to all customers on a uniform, nondiscriminatory basis. We believe that the Act, in its negotiations procedure, also intends this result.

5. Significantly, § 252(e)(1) states that any interconnection agreement adopted by negotiation or arbitration must be submitted to the State commission for approval. Section 252(h) provides that any agreement approved by a State commission shall be made available for public inspection and copying. Pursuant to § 252(i), an LEC is required to make available any interconnection, service, or network element provided under an approved

agreement to which it is a party to any other requesting provider upon the same terms and conditions as those provided in the agreement. Similarly, Bell Operating Companies, such as USWC, may file with a State commission a statement of the terms and conditions it generally offers within that State to comply with § 251.

6. It is apparent to us that the negotiations process specified in the Act is consistent with the basic intent of a tariff requirement: both are designed to ensure the availability of services on a uniform, non-discriminatory basis to all customers. For this reason, we disagree with USWC's contention that any tariff requirement contravenes the Act. The adopted rules, specifically Rule 7, reflect our determination.

7. Additionally, we point out that Rule 8 permits providers to negotiate agreements regarding interconnection, the termination of local traffic, the purchase of any unbundled network element, or publication of a White Pages directory. The rule does direct that such agreements shall not be inconsistent with specific provisions contained in a provider's currently effective tariff. We find that the Rules' tariff requirements and the provisions regarding negotiated agreements are consistent with the Act. In addition, as noted in the discussion above (paragraph E.3), the Act specifically provides that State requirements regarding interconnection and unbundling are permissible. For these reasons,